

# **Exhibit 19**

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1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

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4 IN RE: \*

5 NAMENDA DIRECT PURCHASER \* C.A. 1:15-cv-07488-CM

6 ANTITRUST LITIGATION \*

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14 Videotaped Deposition of ERNST R. BERNDT, Ph.D.

15 Thursday, November 2, 2017

16 9:07 a.m.

17 White & Case LLP

18 75 State Street - 24th Floor

19 Boston, Massachusetts 02109

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24 ----- Janis T. Young, RDR, CRR -----

25 Registered Professional Reporter

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<p style="text-align: right;">Page 90</p> <p>1 you have here, you also cite this article in your      2 opening report in Footnote 75, which is the one we      3 were just looking at a minute ago. And I'll just      4 read the parenthetical that you have for this      5 article and just ask you one question about it.</p> <p>6 You say, and you're quoting the article,      7 "Just as spreading investments over many assets      8 reduces risk, so averaging forecasts across      9 different forecasters reduces the size of the      10 expected error, a point first formalized by Bates      11 and Granger in 1969 almost 30 years ago."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Does that indicate to you that this will --      15 at least your second article was about different      16 forecasters and not one forecaster?</p> <p>17 MR. LUKENS: Object to the form. If you      18 have a recollection; otherwise don't speculate.</p> <p>19 A. That suggests -- well, literally, it was      20 different forecasts, yes; and I think the context is      21 it was looking at the forecasts of a couple of      22 international agencies, one being the International      23 Monetary Fund, the IMF, and the other being the      24 OECD, the Organization of Economic and -- I forgot      25 what the CD stands for.</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Were there any projections that you      2 reviewed that you did not consider?</p> <p>3 MR. LUKENS: Objection. Give me a      4 second.</p> <p>5 I think you're running close -- and I'll      6 let you answer this question.</p> <p>7 I'm going to let him answer this      8 question, but you're running close to materials that      9 needs to be examined on per the stipulation are the      10 ones relied on.</p> <p>11 I'll let you ask him if there are those      12 that he didn't rely upon or review, but I'm going to      13 hold you tight to that stipulation.</p> <p>14 A. There were some forecasts that appeared to      15 be duplicates conducted on the same day, and so      16 rather than adopting a number of those duplicates, I      17 just chose one for that day.</p> <p>18 And depending on the calculation, in      19 some cases I also restricted it just to those      20 forecasts that were done after [REDACTED] after which      21 IMS data had become available on actual sales, and I      22 excluded forecasts made before then.</p> <p>23 Q. Would you consider additional      24 non-duplicative forecasts to be relevant to your      25 analysis and average?</p>
<p style="text-align: right;">Page 91</p> <p>1 They're different agencies, and it      2 looked at those two forecasts versus a published      3 consensus forecast, and it said that the consensus      4 forecast made by a number of different forecasters      5 was better than just looking at those two.</p> <p>6 Q. In your reply report, turning back to that,      7 Paragraph 12 --</p> <p>8 A. We didn't go to Paragraph 12 before.</p> <p>9 Q. I just meant, turning back to your reply      10 report.</p> <p>11 If we look at Paragraph 12 --</p> <p>12 A. Yes.</p> <p>13 Q. -- you state closer to the end of the      14 paragraph, it's about the fifth line up from the      15 bottom, [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And is that true, you reviewed all of the      23 forecasts and related documents for 2012 to 2015      24 that you could find?</p> <p>25 A. For this case, yes.</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. LUKENS: Object to the form.</p> <p>2 A. It would depend. They could be.</p> <p>3 Q. In what way would they not be?</p> <p>4 MR. LUKENS: Object to form. You're      5 talking about an undefined set of documents that may      6 or may not exist and how they might impact      7 something, and it's incredibly broad and I don't      8 know how he could possibly answer that question.</p> <p>9 Q. Explain to me what you meant by "they could      10 be."</p> <p>11 A. If there's strong evidence that they were      12 circulated internally, that they were cited      13 externally to investors, things like that.</p> <p>14 If their findings were seemingly just      15 very, very different from other forecasts, it would      16 be useful to know how the forecast was employed      17 internally, and in external statements to the      18 investor community.</p> <p>19 Q. Did you take those same factors that you      20 just enumerated for me when selecting the forecasts      21 that you included in your Exhibit D?</p> <p>22 A. For the most part, yes, I believe I did.</p> <p>23 Q. Did you find accompanying documents that      24 showed that the forecasts that you included in      25 Exhibit D were circulated internally?</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. Namenda XR actually launched in mid-June, 2 but you chose to exclude forecasts from June; is 3 that right?</p> <p>4 A. For that calculation, yes; and in part 5 because IMS data typically comes -- at least the NPA 6 data, becomes available about ten days after a week 7 ends.</p> <p>8 And so there probably was minimal, if 9 any, data available in July 2013 that talked about 10 the first few weeks of data. I'll take your 11 representation; I may have gotten the launch date 12 wrong.</p> <p>13 Was it June 14, you're saying, 2013?</p> <p>14 Q. It was mid-June, 2013.</p> <p>15 A. So early August would be the first time you 16 would get some monthly data.</p> <p>17 Q. And when you keep referring to IMS data, I 18 want to make sure that we're clear. You're not 19 talking about IMS data in terms of the actual 20 projections; right? You're talking about the IMS 21 data that was included in Forest's projections; 22 correct?</p> <p>23 A. I'm including -- what I'm referring to is 24 that when Forest made its internal projections, to 25 my understanding it was based on data they purchased</p>	<p style="text-align: right;">Page 100</p> <p>1 included it.</p> <p>2 Q. And in your definition of recent forecasts, 3 the end date was pre February 14, 2014; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And why did you choose that date as the end 6 date?</p> <p>7 A. That was the date that Forest announced its 8 hard switch strategy. There may have been some 9 forecasts after [REDACTED], between February -- 10 between [REDACTED], and February 14 of 2014; 11 but since the decision was made internally, 12 announced internally to pursue the hard switch on 13 [REDACTED] I believe the date was, I didn't include 14 many forecasts beyond that, because they would be 15 tainted by knowledge of the internal decision.</p> <p>16 Q. And, sir, when you refer to the internal 17 decision being in [REDACTED], I believe you 18 discuss that in Paragraph 37 of your original 19 report; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you cite to one document for that 22 proposition; is that right?</p> <p>23 A. That is correct.</p> <p>24 Q. And that is an [REDACTED] email from 25 [REDACTED]; is that correct?</p>
<p style="text-align: right;">Page 99</p> <p>1 from IMS.</p> <p>2 And IMS has several data sources. In 3 the context of making these monthly forecasts, I 4 presumed that they used a monthly data source from 5 IMS. But they may have also used some of their 6 weekly data forecasts.</p> <p>7 Q. And you include in Exhibit D some forecasts 8 that are dated on the same date; correct?</p> <p>9 A. Yes, particularly when they had some 10 different information.</p> <p>11 So, for example, I have two of them on 12 [REDACTED], and they have different numbers. And 13 I have two of them on [REDACTED] and they have some 14 different numbers.</p> <p>15 And you have three on [REDACTED]</p> <p>16 correct?</p> <p>17 A. And on two of the three -- there are two 18 that have the same numbers. And I included a second 19 one on [REDACTED], as you see in my footnote there, 20 that the metadata suggests that that document was 21 created in [REDACTED] was last printed on that date, so I 22 don't know exactly when it was made, but in order to 23 err on the side of caution of forecasted rates, 24 since that's a forecast that has a [REDACTED] percent 25 conversion rate, which is on the high end, I</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. Who is [REDACTED]; do you know?</p> <p>3 A. No, I do not.</p> <p>4 Q. Was he deposed in this action?</p> <p>5 A. I do not know.</p> <p>6 (Marked, Exhibit 10, [REDACTED] [REDACTED], FRX-NY-01576623 - 8 624.)</p> <p>9 Q. Sir, I'm handing you what's been marked as 10 Exhibit 10. This is an email from -- the top email 11 is from [REDACTED] 12 [REDACTED] Do you see that?</p> <p>13 A. Yes, I see that.</p> <p>14 Q. And the first email in time, the second is 15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] Do you 19 see that?</p> <p>20 A. Yes. It's not clear to me whether that 21 means [REDACTED] [REDACTED] [REDACTED]</p> <p>24 Q. And sir, you understand Brent to mean Brent 25 Saunders, the CEO of Forest?</p>

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<p style="text-align: right;">Page 110</p> <p>1 forecast in here after [REDACTED]. And so --</p> <p>2 Q. Right; and I'm just trying to understand</p> <p>3 why you would include this language here.</p> <p>4 A. I think I've answered that question.</p> <p>5 Q. Actually, I'm not sure that you have.</p> <p>6 MR. LUKENS: Well, he's provided an</p> <p>7 answer. You may not like it, but he's certainly</p> <p>8 provided an answer to the question.</p> <p>9 MS. BURKE: No, I don't think I actually</p> <p>10 got an answer to my last question.</p> <p>11 Q. If you're assuming that everything after</p> <p>12 the decision was made and you're assuming the</p> <p>13 decision was made in [REDACTED] if you're assuming</p> <p>14 that everything after that is tainted, why would you</p> <p>15 need to include a February 14, 2014 end date in your</p> <p>16 recent forecasts?</p> <p>17 A. It was non-binding. I didn't include</p> <p>18 anything after [REDACTED]</p> <p>19 Q. So why did you write it here?</p> <p>20 MR. LUKENS: Objection, asked and</p> <p>21 answered.</p> <p>22 A. I don't remember why, but it's certainly</p> <p>23 non-binding in the sense that I'm not including</p> <p>24 anything after [REDACTED]</p> <p>25 Q. And why did you include the [REDACTED]</p>	<p style="text-align: right;">Page 112</p> <p>1 forecasters ever received that email or received any</p> <p>2 indication that a decision had been made in [REDACTED]</p> <p>3 [REDACTED]?</p> <p>4 MR. LUKENS: Object to the form. You're</p> <p>5 asking about an email that he's drawing from his</p> <p>6 recollection here that has listed on it people who</p> <p>7 were copied; and I'm not suggesting that they say</p> <p>8 one thing or another, but you're asking about who</p> <p>9 received the email, and he doesn't have that email.</p> <p>10 So I think it's an unfair question.</p> <p>11 Q. Did you understand my question, sir?</p> <p>12 A. Please repeat it.</p> <p>13 Q. Did you see the evidence that the people</p> <p>14 that prepared these Forest forecasts ever received</p> <p>15 any email or notification that a decision had been</p> <p>16 made to enforce the hard switch in [REDACTED]?</p> <p>17 MR. LUKENS: Same objection.</p> <p>18 A. I don't know. I don't have the email in</p> <p>19 front of me to which I referred to the decision</p> <p>20 being announced internally at -- whatever that</p> <p>21 footnote was.</p> <p>22 Q. Do you know who the individuals were that</p> <p>23 prepared these forecasts?</p> <p>24 A. They were done under the supervision I</p> <p>25 believe of Julie Snyder, and I think there was a</p>
<p style="text-align: right;">Page 111</p> <p>1 forecast if you believed that was tainted?</p> <p>2 A. I believe I answered that a minute ago.</p> <p>3 Q. Right, you said to err on the side of</p> <p>4 caution; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Why didn't you include any other forecasts</p> <p>7 beyond [REDACTED] to also err on the side of</p> <p>8 caution?</p> <p>9 A. My experience in these forecasts is that</p> <p>10 sometimes there takes a while for information to</p> <p>11 diffuse through an organization, and it may have</p> <p>12 been that some of the forecasting people didn't know</p> <p>13 about the hard switch decision being made on [REDACTED]</p> <p>14 [REDACTED] and again to err on the side of caution, I'll</p> <p>15 give them an extra between twelve days -- eleven</p> <p>16 days here, I guess -- and I note that it's on the</p> <p>17 high-end range of forecast. A [REDACTED] percent one, I</p> <p>18 presume I would have been criticized for not having</p> <p>19 included it.</p> <p>20 So again, to err on the side of caution,</p> <p>21 I included it.</p> <p>22 Q. And you said it's -- that could potentially</p> <p>23 be because it would take a while for information to</p> <p>24 diffuse through an organization.</p> <p>25 Did you see any evidence that any of the</p>	<p style="text-align: right;">Page 113</p> <p>1 woman, Mei, M-e-i, I think was her first name, and</p> <p>2 L-e-u-n-g or something like that, who was one of the</p> <p>3 to-do people.</p> <p>4 Q. Are those the only people that you</p> <p>5 understand prepared --</p> <p>6 A. I understand --</p> <p>7 MR. LUKENS: Wait; let her ask her</p> <p>8 question.</p> <p>9 Q. Are those the only people that you</p> <p>10 understand prepared the Forest forecasts?</p> <p>11 MR. LUKENS: Objection to form. This is</p> <p>12 not a memory test. You have documents that have</p> <p>13 this information. To expect Professor Berndt to</p> <p>14 remember the names of the individuals in this case</p> <p>15 is truly unfair.</p> <p>16 A. As I sit here, I can't recall other names,</p> <p>17 but I believe Julie Snyder testified that she had an</p> <p>18 army of forecasters.</p> <p>19 (Marked, Exhibit 12, email chain, at</p> <p>20 top, [REDACTED])</p> <p>21 FRX-NY-01565865 - 867.)</p> <p>22 Q. Sir, I'm handing you what's been marked as</p> <p>23 Exhibit 12. And this, for the record, is actually</p> <p>24 Bates-stamped FRX-AT-01779417.</p> <p>25 I realize that the New York AG stamp at</p>

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<p style="text-align: right;">Page 114</p> <p>1 the bottom is there as well, but --</p> <p>2 A. I don't see the AT --</p> <p>3 Q. And I apologize; that Bates number has been</p> <p>4 cut off of the document, but I will represent to you</p> <p>5 that that is the Bates number for this deposition.</p> <p>6 MR. LUKENS: And it was Devlin Exhibit</p> <p>7 3, as long as we identify it that way.</p> <p>8 Q. And this is the document that you cite to</p> <p>9 in -- the one document that you cite to in Paragraph</p> <p>10 37 of your report to indicate that the decision was</p> <p>11 made in [REDACTED] is that right?</p> <p>12 A. That is correct.</p> <p>13 Q. And you'll see in both the original email</p> <p>14 as well as the next email in time, Julie Snyder and</p> <p>15 Julie May were not recipients of this document, or</p> <p>16 this email; correct?</p> <p>17 A. Correct. I do see that Mark Devlin was and</p> <p>18 so was William Meury, who were both very actively</p> <p>19 involved in the marketing and in the planning, and I</p> <p>20 believe both of them -- and Lei Meng is there as</p> <p>21 well, the woman whose name I mentioned a few minutes</p> <p>22 ago. I believe she was one of the people who</p> <p>23 actually did the forecasting.</p> <p>24 Q. Sir, I believe a moment ago you mentioned</p> <p>25 Julie May --</p>	<p style="text-align: right;">Page 116</p> <p>1 don't do so. I instruct you not to do that. She's</p> <p>2 asking about the methodology, not the logistics.</p> <p>3 A. I understand the methodology was to look at</p> <p>4 forecasts that had a date on them, preferably; that</p> <p>5 were non-duplicative, as I mentioned earlier; and I</p> <p>6 think the criterion was to put a preference for</p> <p>7 those forecasts that were circulated internally.</p> <p>8 Q. You said there was a preference for doing</p> <p>9 so. Was there an exclusion for doing so?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you know who at Forest commissioned the</p> <p>12 creation of the forecasts?</p> <p>13 A. No, I do not.</p> <p>14 Q. Do you know the qualifications of the</p> <p>15 people that created the forecasts?</p> <p>16 A. No, I do not.</p> <p>17 Q. Do you know which department at Forest</p> <p>18 created the forecasts?</p> <p>19 A. Not offhand.</p> <p>20 Q. Do you know the assumptions that were</p> <p>21 incorporated into the forecasts?</p> <p>22 A. To the extent that they were listed at the</p> <p>23 beginning of the forecast, yes.</p> <p>24 Q. Do you know how those assumptions changed</p> <p>25 over time?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. No, Julie Snyder I mentioned, and I</p> <p>2 mentioned a Lei Meng -- or was it Mei Leung, I may</p> <p>3 have said, M-e-i, L-e -- I got the names backwards.</p> <p>4 But Meng Lei, who's on this email, is to</p> <p>5 the best of my understanding a woman who was very</p> <p>6 much involved in making the forecasts.</p> <p>7 Q. Did you understand that any other</p> <p>8 individuals were involved in making the forecasts?</p> <p>9 A. I think you asked me that before.</p> <p>10 Q. I did; I'm sorry.</p> <p>11 So Meng Lei and Julie Snyder are the</p> <p>12 only two individuals that you can recall; is that</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. If we turn to one of the forecasts that you</p> <p>16 go through in your Exhibit D, what was your</p> <p>17 methodology for selecting which forecast to pick for</p> <p>18 Exhibit D?</p> <p>19 MR. LUKENS: Object to form. He's</p> <p>20 already testified to this.</p> <p>21 But you're free to testify again to it.</p> <p>22 A. I asked --</p> <p>23 MR. LUKENS: Objection. She asked for</p> <p>24 your methodology. If you're going to get into</p> <p>25 communications with your staff or with counsel,</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. LUKENS: Object to the form.</p> <p>2 A. I believe Julie Snyder testified [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>8 Q. Do you know what Namenda IR price is</p> <p>9 incorporated into the forecasts?</p> <p>10 MR. LUKENS: Object to the form. Into</p> <p>11 any specific forecast? Generally? That question is</p> <p>12 incredibly vague. You're asking about a body of</p> <p>13 forecasts and you used the term "Namenda price," so</p> <p>14 I don't know how he can answer that question. But</p> <p>15 if he understands it, he can answer that question.</p> <p>16 A. My understanding is that -- and what I</p> <p>17 recall is at the beginning part of the forecast,</p> <p>18 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>24 Q. And changes in the data or changes in the</p> <p>25 prices would potentially affect the ultimate outcome</p>

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<p style="text-align: right;">Page 118</p> <p>1 of the forecast; is that right?</p> <p>2 MR. LUKENS: Objection to the form,</p> <p>3 vague.</p> <p>4 A. Yes.</p> <p>5 Q. Projections made closer in time -- you're</p> <p>6 working under the assumption that the decision was</p> <p>7 made in [REDACTED]; correct?</p> <p>8 A. [REDACTED], is when I see that email</p> <p>9 that's now Exhibit 11, I believe; or is it 12?</p> <p>10 Q. So projections --</p> <p>11 A. That's Exhibit 12; sorry.</p> <p>12 Q. Working under the assumption that that</p> <p>13 actually is the date of the decision, projections</p> <p>14 made closer in time to that decision would reflect</p> <p>15 all the data that Forest had up until that point;</p> <p>16 correct?</p> <p>17 MR. LUKENS: Objection to the form.</p> <p>18 A. I think it's reasonable, although it's not</p> <p>19 100 percent certain, that later forecasts</p> <p>20 incorporated more actual data.</p> <p>21 Q. And when you would incorporate more actual</p> <p>22 data you would have greater accuracy; is that</p> <p>23 correct?</p> <p>24 A. Other things being equal.</p> <p>25 MR. LUKENS: Object to form.</p>	<p style="text-align: right;">Page 120</p> <p>1 requests and so forth, and I think a pretty</p> <p>2 definitive criterion is, was this forecast</p> <p>3 announced -- or were the numbers in this forecast</p> <p>4 publicly announced to the external community?</p> <p>5 And so forecasts that were made but were</p> <p>6 never -- their numbers were never really publicly</p> <p>7 disclosed, other things being equal, seem to have</p> <p>8 plausibly less reliability.</p> <p>9 Q. Would you agree with me, then, that the</p> <p>10 same would be true about the announcement of the</p> <p>11 withdrawal of Namenda IR, that once it was publicly</p> <p>12 announced, then it was more reliable than an email</p> <p>13 from [REDACTED]?</p> <p>14 MR. LUKENS: Objection to the form.</p> <p>15 A. It could be, but again --</p> <p>16 MR. LUKENS: Objection; objection to the</p> <p>17 form, and to the characterizations.</p> <p>18 A. They could be, but again, my understanding</p> <p>19 is, while it was not publicly announced until</p> <p>20 February 14, [REDACTED]</p> <p>[REDACTED]</p> <p>23 And so that made that very credible.</p> <p>24 Q. And how would that taint the projections</p> <p>25 after [REDACTED]?</p>
<p style="text-align: right;">Page 119</p> <p>1 THE WITNESS: Sorry; I should have</p> <p>2 waited.</p> <p>3 MR. LUKENS: No, I've got to go faster.</p> <p>4 I'm just getting hungry; that's all.</p> <p>5 Q. And projections closer in time, if they</p> <p>6 have greater accuracy, potentially should be given</p> <p>7 greater weight as well?</p> <p>8 MR. LUKENS: Objection to form. Closer</p> <p>9 in time to what?</p> <p>10 A. Again, other things being equal, if there</p> <p>11 are projections made that contain numbers that are</p> <p>12 not communicated either internally in documents or</p> <p>13 externally to investors and so on, whereas earlier</p> <p>14 forecasts are, then it's reasonable to infer that</p> <p>15 the later forecast for some reason or another was</p> <p>16 not deemed to be reliable because it wasn't</p> <p>17 announced, whereas earlier ones were.</p> <p>18 Q. So, sir, you think that it's reasonable to</p> <p>19 infer that because those forecasts weren't</p> <p>20 circulated, that they are less reliable; is that</p> <p>21 what you just said?</p> <p>22 MR. LUKENS: Objection to the form,</p> <p>23 mischaracterizes what he said, and it's frankly --</p> <p>24 A. Julie Snyder testified that they did</p> <p>25 hundreds of forecasts in response to various</p>	<p style="text-align: right;">Page 121</p> <p>1 A. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>10 Q. Did that change any of the data that went</p> <p>11 into the forecasts after [REDACTED]</p> <p>12 MR. LUKENS: Objection to form, vague.</p> <p>13 A. I'm not sure how to answer that question,</p> <p>14 because the data that went into it consisted</p> <p>15 basically of two things: one, actual data; and</p> <p>16 assumptions.</p> <p>17 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>23 Q. Assuming -- let's put aside the assumptions</p> <p>24 for a minute, but it would not have affected the</p> <p>25 actual data; is that fair?</p>

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<p>1 [REDACTED] [REDACTED]</p> <p>3 Q. If you turn to the page that's titled July 4 [REDACTED] --</p> <p>5 A. Which exhibit are you talking about?</p> <p>6 Q. For both exhibits, sir.</p> <p>7 MR. LUKENS: 15 and 16?</p> <p>8 MS. BURKE: 15 and 16.</p> <p>9 MR. LUKENS: What's the title you're 10 looking for?</p> <p>11 MS. BURKE: [REDACTED] [REDACTED]</p> <p>13 Q. And do you see that the dollar amounts 14 listed under Namenda IR Branded Net Sales are all 15 different; correct?</p> <p>16 MR. LUKENS: I'm sorry; which page are 17 you on? I'm not seeing that so I want to make sure 18 I'm on the right page.</p> <p>19 MS. BURKE: It's the next page.</p> <p>20 A. I'm seeing they're the same for all fiscal 21 years except fiscal year '14.</p> <p>22 Q. I'm sorry; you're looking under the 23 highlighted line that says --</p> <p>24 A. No, I'm looking right at the top of the 25 page.</p>	<p>Page 142</p> <p>1 A. That's correct.</p> <p>2 Q. In addition to other differences between 3 them?</p> <p>4 MR. LUKENS: Object to the form of that 5 question.</p> <p>6 Q. If you pull up Exhibit 17, which is the 7 other one I handed you, and go to the same 8 Withdrawal Scenario page in that document, do you 9 see that the, for example, Namenda IR branded net 10 sales, those amounts are different than either 11 Exhibit 16 or Exhibit 15?</p> <p>12 A. So yes, there are differences in the 13 withdrawal scenarios.</p> <p>14 Q. So you would agree with me, sir, that these 15 three documents are not duplicates of each other?</p> <p>16 MR. LUKENS: Object to the form. You 17 can answer the question.</p> <p>18 But you asked him about a couple entries 19 on the document, and he's testified about what his 20 view is of them. But you haven't asked him about 21 the forecasts in here with respect to the 22 conventional scenario, which are inscrutable on this 23 document.</p> <p>24 So with that objection, you can answer.</p> <p>25 Q. Sir, these are not exact duplication of</p>
<p>Page 143</p> <p>1 Q. Right, and I'm asking about the dollar 2 amounts listed under Namenda IR Branded Net Sales, 3 the first highlighted line.</p> <p>4 A. Okay.</p> <p>5 Q. Those are all different amounts; correct?</p> <p>6 A. They're different price assumptions, yes.</p> <p>7 Q. And if you turn to the page before that's 8 entitled Withdrawal Scenario, do you see that 9 there's a number -- there's a set of information on 10 the right-hand side that is not included on Exhibit 11 16, that's not included in Exhibit 15?</p> <p>12 A. Say that once again, please?</p> <p>13 Q. Sure. On this page in the Withdrawal 14 Scenario --</p> <p>15 A. This page of which document?</p> <p>16 Q. Of Exhibit 16.</p> <p>17 A. 16; I got it.</p> <p>18 Q. Do you see that there's a number of 19 information and entries in these columns off to the 20 side of the table in the chart on Exhibit 16 that 21 are not included on Exhibit 15; correct?</p> <p>22 A. That is correct.</p> <p>23 Q. And the total amount of NPV of operating 24 profit is different between these two documents as 25 well; right?</p>	<p>Page 145</p> <p>1 each other, are they?</p> <p>2 A. They're not exact duplicates of each other 3 under the withdrawal scenario, no.</p> <p>4 Q. The Excel spreadsheets as a whole are not 5 exact duplicates of each other; is that correct?</p> <p>6 A. They are not exact duplicates in every 7 detail, no.</p> <p>8 Q. Thank you.</p> <p>9 The projections -- there were other 10 projections that you didn't consider in your revised 11 Exhibit D; correct?</p> <p>12 MR. LUKENS: Object to form.</p> <p>13 A. There may well be.</p> <p>14 Q. For instance, you didn't consider any 15 projections after [REDACTED]; right?</p> <p>16 A. I believe that's the case, yes.</p> <p>17 Q. And projections from [REDACTED] [REDACTED] have been the closest in time to when 19 Forest announced its withdrawal of Namenda IR in 20 February; correct?</p> <p>21 MR. LUKENS: Object to the form.</p> <p>22 A. They would have been closer in time to the 23 announcement. They would have been farther away 24 from the board meeting.</p> <p>25 Q. Well, let's talk about the board meeting.</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. Can I put these exhibits away?</p> <p>2 Q. Yes, sir; thank you.</p> <p>3 Actually, before we get to that, I just</p> <p>4 want to ask a couple more questions about revised</p> <p>5 Exhibit D.</p> <p>6 So you took in here the dates that are</p> <p>7 included here, the dates of the -- the titles rather</p> <p>8 than the metadata; is that correct?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. So you weren't necessarily accounting for</p> <p>11 different forecasts as we saw with those [REDACTED]</p> <p>12 ones that may have had [REDACTED] all listed in the</p> <p>13 title, but were actually, the forecasts themselves</p> <p>14 were different dates; is that right?</p> <p>15 MR. LUKENS: Objection to the form,</p> <p>16 assumes facts.</p> <p>17 A. I looked primarily -- as I testified</p> <p>18 before, I primarily looked at the captions on the</p> <p>19 spreadsheets, the titles, and did not go into the</p> <p>20 metadata, which has its own ambiguities.</p> <p>21 Q. And you potentially discounted what you</p> <p>22 considered duplicates on the basis because the</p> <p>23 titles had the same initial date on those titles; is</p> <p>24 that right?</p> <p>25 MR. LUKENS: Object to the form,</p>	<p style="text-align: right;">Page 148</p> <p>1 documents. This chart has the dates from the</p> <p>2 metadata of date last modified, date last printed,</p> <p>3 date created, and then I included a column at the</p> <p>4 end that says, excluded from Berndt Exhibit D. And</p> <p>5 you'll see the ones with X's and also the ones that</p> <p>6 are highlighted in gray are the projections that we</p> <p>7 have found that you did not include in your revised</p> <p>8 Exhibit D average.</p> <p>9 Do you see that?</p> <p>10 MR. LUKENS: I'll object to the entire</p> <p>11 characterization of the document. I'm going to</p> <p>12 object to the use of the document unless you're</p> <p>13 going to testify about or show him one of the</p> <p>14 documents that you've cited in here so that he can</p> <p>15 verify this information.</p> <p>16 You're not an expert, you're not</p> <p>17 testifying. Dr. Fowdur put in a report. I don't</p> <p>18 see this as an exhibit to her report, and I think</p> <p>19 this is just a completely improper use of your time,</p> <p>20 and you can ask him a question.</p> <p>21 Q. Do you see that I've done that, sir?</p> <p>22 A. I think I see it. The print is pretty</p> <p>23 small.</p> <p>24 Q. I apologize. We were trying to keep it all</p> <p>25 on one page.</p>
<p style="text-align: right;">Page 147</p> <p>1 mischaracterizes his earlier testimony on the issue.</p> <p>2 A. I viewed them as duplicative and therefore</p> <p>3 excluded them.</p> <p>4 (Marked, Exhibit 18, entitled Forest</p> <p>5 [REDACTED] [REDACTED].)</p> <p>7 Q. Sir, you'll see that I've just handed you</p> <p>8 what's been marked as Exhibit 18, and Exhibit 18 is</p> <p>9 a chart that I have put together, which takes your</p> <p>10 revised Exhibit D of entries after [REDACTED] to</p> <p>11 the end of your entries of [REDACTED], which</p> <p>12 you've listed in your chart as being the most recent</p> <p>13 forecasts.</p> <p>14 And I've added in some columns and some</p> <p>15 additional entries. The columns that I've added are</p> <p>16 from the metadata that was provided with each of</p> <p>17 those spreadsheets, being the date last modified,</p> <p>18 the date last printed, the date created, and I also</p> <p>19 included a column --</p> <p>20 A. Can I just go through that again?</p> <p>21 Q. Sure. There's a column that's listed Date</p> <p>22 Last Modified --</p> <p>23 A. I see.</p> <p>24 Q. That on your chart you just have date and</p> <p>25 you said you took that from the title of the</p>	<p style="text-align: right;">Page 149</p> <p>1 And you'll see that up until [REDACTED]</p> <p>2 there were eight projections that you did not</p> <p>3 include in your revised Exhibit D that we found here</p> <p>4 that were different from other projections listed in</p> <p>5 your Exhibit D.</p> <p>6 MR. LUKENS: I object to the</p> <p>7 characterization of it as different, and you can</p> <p>8 accept her representation, Professor Berndt, but</p> <p>9 you're not required to accept her representation</p> <p>10 without her showing you the documents.</p> <p>11 Q. Dr. Berndt, I'll represent to you that we</p> <p>12 determined which were duplicates in a manner which</p> <p>13 was similar to what we did today in terms of</p> <p>14 comparing the information visually to see whether or</p> <p>15 not they were exact duplicates of each other, and</p> <p>16 I'll represent to you that we included only in here</p> <p>17 documents that were not duplicative of each other.</p> <p>18 MR. LUKENS: And you're not required to</p> <p>19 accept that representation without verifying it.</p> <p>20 Q. Sir, if you take that representation, do</p> <p>21 you see that there are eight documents and eight</p> <p>22 forecasts that we included here that we found that</p> <p>23 were not duplicative of the forecasts that you</p> <p>24 included in your revised Exhibit D that you did not</p> <p>25 consider in reaching your average and in your</p>

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<p style="text-align: right;">Page 286</p> <p>1 referenced to this document, this NY document, and 2 what I'm doing here is I'm including that document, 3 but it has a different document number, 01752 4 something.</p> <p>5 Q. Right, and I'm asking you how you compared 6 to understand that these two documents, 01752159 was 7 an exact duplicate of what you used in the New York 8 AG case, which is 01657151.</p> <p>9 MR. LUKENS: Object to the form.</p> <p>10 Q. And you testified --</p> <p>11 A. In the New York AG case, I used 01639146, 12 ma'am. I didn't use any AT document; I used an NY 13 document.</p> <p>14 Q. I understand, sir. They are the same 15 document because they are Bates-labeled the same, in 16 the exhibit I just gave you.</p> <p>17 A. As I state in the bottom of Exhibit -- the 18 revised Exhibit D in my reply report, I note here 19 that the caption says that it's a copy of that 20 report. So it wasn't just looking to see whether 21 the forecast numbers were the same; the caption 22 appears to say that it is the same.</p> <p>23 Q. And by "caption," you're referring to the 24 title of the document there; correct?</p> <p>25 A. As I state there, "PX-76," et cetera.</p>	<p style="text-align: right;">Page 288</p> <p>1 CERTIFICATE OF COURT REPORTER 2 3 I, Janis T. Young, Registered Professional 4 Reporter and Certified Realtime Reporter, do certify 5 that the deposition of ERNST R. BERNDT, Ph.D., in 6 the matter of In Re: Namenda Direct Purchaser 7 Antitrust Litigation, on November 2, 2017, was 8 stenographically recorded by me; that the witness 9 provided satisfactory evidence of identification, as 10 prescribed by Executive Order 455 (03-13) issued by 11 the Governor of the Commonwealth of Massachusetts, 12 before being sworn by me, a Notary Public in and for 13 the Commonwealth of Massachusetts; that the 14 transcript produced by me is a true and accurate 15 record of the proceedings to the best of my ability; 16 that I am neither counsel for, related to, nor 17 employed by any of the parties to the above action; 18 and further that I am not a relative or employee of 19 any attorney or counsel employed by the parties 20 thereto, nor financially or otherwise interested in 21 the outcome of the action. 22 Transcript review was not requested of the reporter. 23 <i>Janis T. Young</i> 24 _____ 11/3/17 25 Janis T. Young, RDR/CRR</p>																																										
<p style="text-align: right;">Page 287</p> <p>1 Q. And you did not otherwise compare those two 2 documents to one another to determine if the 3 substance was the same between them; is that right?</p> <p>4 A. That is correct.</p> <p>5 Q. And you do not include 01657151 in your 6 average analysis in Exhibit D; is that right?</p> <p>7 MR. LUKENS: Object to the form.</p> <p>8 A. That is correct. I do include 01752 -- let 9 me get it right here, for the clerk -- for the court 10 reporter, I do include, as the [REDACTED] document, 11 01752159.</p> <p>12 MS. BURKE: I have no further questions. 13 Thank you very much.</p> <p>14 MR. LUKENS: We've got no questions.</p> <p>15 THE VIDEOGRAPHER: The time is 16 approximately 6:04, and this is the end of Media 17 No. 6.</p> <p>18 (6:04 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 289</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 I, ERNST R. BERNDT, Ph.D., do hereby certify 3 that I have read the foregoing transcript of my 4 testimony taken on 11/2/17, and further certify 5 that it is a true and accurate record of my 6 testimony (with the exception of the corrections 7 listed below):</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 30%;">Page</th> <th style="text-align: left; width: 30%;">Line</th> <th style="text-align: left; width: 40%;">Correction</th> </tr> </thead> <tbody> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> </tbody> </table> <p style="text-align: right;">ERNST R. BERNDT, Ph.D.</p> <p>22 SUBSCRIBED AND SWORN TO BEFORE ME 23 THIS ____ DAY OF _____, 20___. 24</p> <p style="text-align: right;">(NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>	Page	Line	Correction	9			10			11			12			13			14			15			16			17			18			19			20			21		
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